

LEGAL, TECHNICAL, AND PROCEDURAL CONSTRAINTS

As the Task Force discussed the issues of computer security, administrative security, voter confidence and voter verification, it became clear that several of these issues faced legal, technical and/or procedural constraints which posed, if not limitations, than at least some more questions.

1. FEDERAL AND STATE LAWS: ACCESSIBILITY FOR THE VISUALLY IMPAIRED, NO/LOW LITERACY VOTERS AND NON-ENGLISH SPEAKERS

Perhaps the most significant issue facing the development of any new voting system is the requirement in federal and state law that voting equipment provide blind and visually impaired voters with the ability to vote a secret ballot independently and without assistance.

The United States Congress, and the Legislature of the State of California, in enacting these requirements, clearly stated that this is a top priority and stipulated that federal and state funding shall be contingent on meeting this condition. In other words, the state, if it were to implement a ballot verification process that is not verifiable by blind voters, could place at risk the approximately \$200 million the federal government is providing California for upgrading voting equipment and reform of the election process.

For all voting systems currently certified by the state, none has a paper-based voter verification option that can be utilized by blind, visually impaired, and illiterate or marginally literate voters, although several vendors have expressed the belief that such a process is feasible. Among the options vendors are exploring includes utilizing a fixed text reader that translates text to speech as the paper ballot is printed, or a reading pen

that would allow a blind voter to scan a pen across the paper print-out and hear the words spoken via a speech synthesis component in the pen.

Federal law also requires jurisdictions in California to produce election materials in languages other than English. The County of Los Angeles, for example, is required to provide ballots in English, Spanish, Chinese, Vietnamese, Tagalog, Japanese, and Korean. And Riverside County has a Cahuilla language requirement that is strictly an oral language and has no written form. Providing a paper-based representation of ballots in all these languages is also an important issue, as is the question of whether the paper-based representation must represent the ballot in English as well as the second language so that election officials can read the document.

The Task Force agrees that voting equipment should and must meet the requirements of federal and state laws requiring access to voting.

2. COURT ORDERED CONVERSION

A federal court order on the Secretary of State to assure that there are no pre-scored punch card systems in use in California beyond January 1, 2004, means that nine of California's counties must replace their punch card voting systems by that date. This can only be accomplished in conjunction with legal requirements for contracting and purchasing and the time limitations on state and federal certification of voting systems. For example, as of now, no voting systems currently certified by the state that provide for voting secretly and independently by persons who are blind include a voter verification option that the blind can utilize.

The Task Force agrees that the conversion process required by the presidential elections in 2004 must not be compromised and that its recommendations not undermine the successful preparation and administration of the upcoming March 2, 2004 primary election.

3. PRODUCT DEVELOPMENT AND TESTING CHALLENGES

In order for a county to purchase a system, the vendor would first have to develop it, submit it to national testing laboratories for security and other testing, and submit it to the state for similar testing and evaluation. In addition, the counties would have to issue Requests For Proposal, accept bids, analyze the bids, and negotiate a contract. Many counties are implementing a new voting system for local elections in November of 2003, only six months from the date of this report.

The Task Force agrees that the time requirements for product development and certification are significant issues in terms of the timing of the development of potential market solutions to address any of the issues brought up in this report.

4. DISASTER AVOIDANCE

Implementation of a new voting system requires – in order to avoid the missteps in the Florida 2002 election – significant time to train county personnel, train poll workers, educate the voters concerning the new voting systems, and otherwise prepare for the election. The likelihood that all of the steps outlined above could be accomplished in time to successfully install the equipment and successfully conduct an election in November 2003 is extremely remote.

The Task Force agrees that the presidential elections in 2004 must not be compromised, that any recommendations to change current voting equipment recognize the paramount importance of a successful election in terms of voter confidence, and that its recommendations not undermine the successful administration of those elections.

5. VOTER ISSUES

The California Constitution requires that voting be secret. Voting systems that rely on a “reel to reel” paper tape potentially order ballots sequentially, and could be amenable to efforts to determine which voter cast which ballot. In addition, in the absence of additional voting stations, there is the potential for increasing the time it takes to vote, creating longer lines at polling places, and discouraging voters from casting ballots.

There is unanimous concern on the Task Force that any proposed method of verification not inconvenience voters, create lines at the polling place, or otherwise discourage voters from casting a ballot.

6. ELECTION ADMINISTRATION

The recruitment and training of nearly 100,000 mostly elderly poll workers for a statewide election is a major undertaking under current circumstances. Requiring more complex equipment naturally raises concerns over poll worker recruitment, training, mechanical reliability, ongoing operational costs, and voter frustration. These concerns need to be considered.

The Task Force agrees that new equipment options should be as simple to administer as possible so as to not create unnecessary complexity at the polling place.

7. PRINTER ISSUES

One method discussed is to create a paper record of the vote for each voter to verify his or her ballot choices. This requires that a printer be added to the voting machine. The voting machine can produce the printed version of the ballot when the voter casts his or her ballot, when the polls close, or as required for the 1% manual recount. The latter two of these options are currently available on California-certified DRE systems.

Printers at polling places potentially create several significant election administration problems, including: (1) added cost to the system; (2) printer jams or other malfunctions requiring poll worker intervention; (3) added weight to the voting equipment; (4) current inaccessibility of the paper verification option to persons who are blind, visually impaired, illiterate, marginally literate, or are oral language restricted; (5) need for printers to print in foreign language characters; (6) more equipment that poll workers need to be trained to use and troubleshoot any problems; (7) more equipment for each jurisdiction to store, transport and maintain; and (8) additional supplies and warehousing procedures required to account for “official” ballot paper requirements.

The Task Force agrees that there are a number of logistical challenges that are present with any paper-based voting system using printers and these challenges need to be explored and understood in greater detail.

8. MARKETPLACE

As noted, there are currently no voting systems that offer paper-based voter verification procedures that provide persons who are blind or visually impaired with the ability to verify their ballot. Systems currently available, either as certified systems or as prototypes, rely on paper for a voter to verify the electronic record. The marketplace is potentially capable of addressing the technical issues with printers and poll workers listed above as well as producing solutions to achieving voter verification without utilizing paper.

The Task Force agrees that local jurisdictions should have a range of verification option to choose from, including paper-based and electronic options.

9. REIMBURSEMENT

As mentioned above, several counties have already purchased DRE voting equipment. New standards have been developed by the FEC and newer standards may be

developed by NIST. This presents potentially significant issues of funding and reimbursement, and raises the issue of the timing of any requirement for implementing new standards or acquiring new equipment.

The Task Force agrees that state or federal funds should be provided to pay the cost of upgrading any system that does not meet the requirements implemented as a result of the recommendations of this report.